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Dec. 10, 79

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1075.

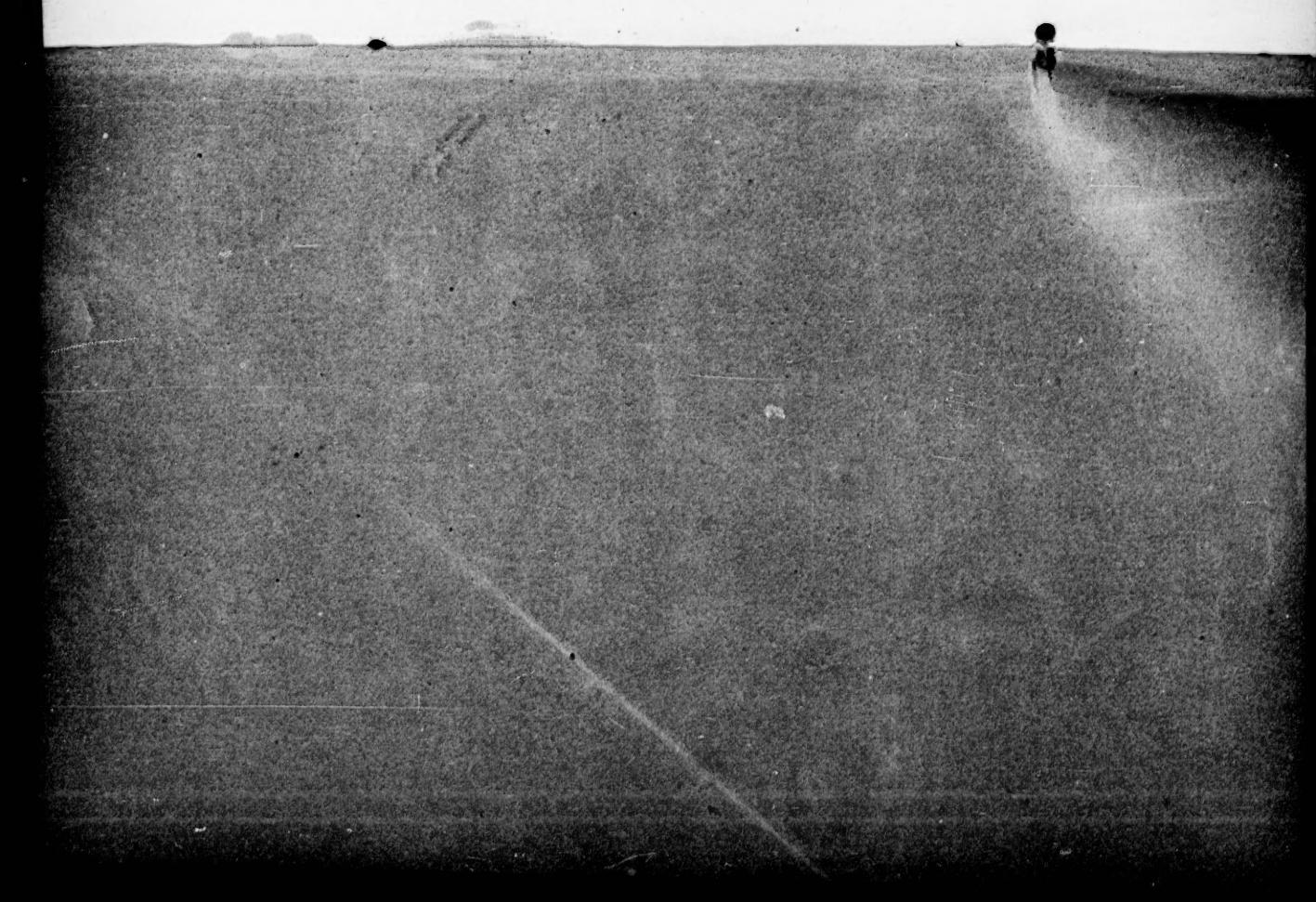
N. A. COWDREY, APPELLANT,

vs.

J. V. W. VANDENBURGH, H. L. CRAWFORD, AND L. S. FILBERT, AS J. V. VANDENBURGH & CO.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 17, 1879.



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INDEX.

	Original.	Print.
Original bill	1	1
Demurrer	13	7
Amended bill of Cowdrey	14	7
Pro confesso vs. Cowdrey	16	9
Answer of Cowdrey	17	9
Replication	24	13
Decree	24	13
Appeal to general term	26	14
Decree in general term	27	14
Appeal to Supreme Court of the United States	27	14
Bond on appeal to Supreme Court of the United States	28	15
Clerk's certificate	30	15

1 In the supreme court of the Dist. of Columbia.

J. V. W. VANDENBURGH, H. L. CRANFORD, and L. S. Filbert, trading as J. V. W. Vandenburgh & Co.,

vs.

RUDOLPH BLUMENBERG, THE DISTRICT OF COLUMBIA, Wm. Dennison, Henry T. Blow, J. H. Ketcham, R. W. Tayler, J. M. Broadhead, W. W. Corcoran, Henry M. Sweeny, Lewis J. Davis, Moses Kelly, and Fitzhugh Coyle.

In equity. No. 3970. Doc. 14.

To the supreme court of the District of Columbia sitting in equity:

The plaintiffs complain,

1. That they are citizens of the United States, and trading and doing business together in the District of Columbia under the firm name of J. V. W. Vandenburgh & Co.

2. That, as they are informed, the defendant Rudolph Blumenberg is a citizen of the United States, and his last known residence was in the District of Columbia, and he is sued individually.

2 3. The District of Columbia is the title of a local government assuming to be created in and for said District under and by virtue of a part of the 8th section of the 1st article of the Constitution of the United States, which provides that "Congress shall exercise exclusive legislation in all cases whatsoever over such District, not exceeding ten miles square, as may, by cession of particular States, and acceptance by Congress, become the seat of government of the United States," and under and by virtue of an act of Congress entitled "An act to provide a government for the District of Columbia, approved February 21, 1871," and an act of Congress entitled "An act for the government of the said District of Columbia and for other purposes," approved June 20, 1874.

4. The defendants William Dennison, Henry T. Blow, and J. H. Ketcham are Commissioners of or for the said District, appointed under and in pursuance of the act of Congress last before referred to, with specified and limited powers, and upon whom, or either of them, process may be served in all suits against the said District, as will fully appear by reference to the said act.

5. The defendants R. W. Tayler and J. M. Broadhead are respectively the First and Second Comptrollers of the Treasury of the United States, and are a board of audit created by the 6th section of the said act of Congress of June 20, 1874, and are sued in their official capacity.

6. The defendant Fitzhugh Coyle is the comptroller of the said District of Columbia, and a citizen of the United States, and of said District.

7. The defendants W. W. Corcoran, H. M. Sweeny, Lewis J. Davis, and Moses Kelly are commissioners of the sinking fund of the District of Columbia, designated and continued by the 7th section of the said last mentioned act of Congress, and are also sued in their official capacity.

3 8. The plaintiffs, on or about the 17th of February, 1874, was the owner of, and had in their possession, certain papers, commonly called certificates of the Board of Public Works of said District, signed by the auditor of said board, which certificates were issued to the said J. V. W. Vandenburgh & Co., on account of work done by them in the

said District of Columbia, under and by virtue of contracts in writing with said board, to wit, certificate No. 4441, Columbia street, dated December 6, 1874, for $8,451.88.

9. That, being the owner and possessor of said certificate, the plaintiffs applied to the defendant Blumenberg for certain sums of money, of which they were then in need, and obtained from him the sum of three thousand one hundred and sixty dollars ($3,160), and delivered to the said Blumenberg the said certificate, to be held and retained by him for the period of six months, when the said money was to be repaid, and the said certificates returned, to wit, on the 20th of August, 1874.

10. That, on the 20th day of August, 1874, the plaintiffs called at the last place of business of the said Blumenberg, in the District of Columbia, to wit, No. 1213 Pennsylvania avenue, N. W., Washington, D. C., which on the said 17th day of February, 1874, and afterward, was the place of business of the said Blumenberg, with the said sum of $3,160, and the accrued interest thereon, for the purpose of paying the same to the said defendant and obtaining from him the said certificate, according to the said agreement and arrangement between them, but after diligent inquiry and examination could not find the said Blumenberg, or any person representing him or acting for him, and the plaintiffs have ascertained, and upon information and belief aver, that soon after the said deposit of the said certificate with him, the said Blumenberg left the said District clandestinely and has not since returned, nor did he leave any person in charge of his business, nor any information as to where he could be found or addressed or communicated with; that the plaintiffs also, on the 21st day of August, 1874, left at the said last place of business of the said Blumenberg, in the said District, a
4 statement in writing, properly addressed, of their desire and readiness to pay the said sum of money and interest and receive the said certificate, and did also, at the said date, have the said money on deposit for the especial purpose of paying the same, and redeeming and receiving the said certificate, but the plaintiffs were unable to pay the said money or sum, and take up and receive the said certificate, by reason of their inability to find the said Blumenberg, or any person acting for him as aforesaid.

11. That at the time the said money was advanced and the said certificate deposited, as aforesaid, the said Blumenberg designed and intended to violate the said agreement and arrangement, and to dispose of the said certificate for the purpose of cheating and defrauding the plaintiffs, and that in pursuance of such design and intention he, the said Blumenberg, instead of retaining the said certificate, to be held by him and delivered to the plaintiffs on the payment of the amount so advanced or loaned as aforesaid, secretly and without the consent or knowledge of the plaintiffs, or either of them, disposed of or delivered the said certificate to some person or persons to the plaintiffs unknown, who were conniving and co operating with him, the said Blumenberg, for the wrongful and fraudulent purpose aforesaid, and by whom or by some other person or persons to the plaintiffs unknown, the said certificate is now wrongfully held or claimed, or being used or attempted to be used.

12. That the certificate aforesaid is in the following form, viz:

No. 4441. OFFICE OF AUDITOR, BOARD OF PUBLIC WORKS,
Washington, D. C., Dec. 6, 1873.

I hereby certify that I have this day audited and allowed the account of J. V. W. Vandenburgh & Co., for work on Columbia street, amount-

ing to eight thousand four hundred and fifty-one dollars and eighty-eight cents.

$8,451.88.

J. C. LAY, *Auditor.*

5 And was and is simply an acknowledgment or evidence of indebtedness, issued as such, by the direction of the late board of public works; that no law of the United States, or of the said District of Columbia, required the issuing thereof; and that neither in form or otherwise were or is the sum negotiable either by delivery or endorsement, and they can only be transferred by a proper and regular assignment in writing, duly executed; that this was not done with, upon, or in respect of the certificate so deposited by the plaintiffs as aforesaid, and that any attempted transfer or delivery, or any disposition made of the same by the said defendant Blumenberg, or by any person or persons for him, was and is utterly void, and the holders or pretended holders or claimants thereof have no legal interest or right thereto or therein, or to any proceeds thereof, or money due thereon, or to any certificate or other paper of value, which may be or can be issued in consequence of the existence and possession of the said certificate, under the act of Congress of the United States entitled "An act for the government of the District of Columbia," approved June 20, 1874, or any other act of said Congress, or otherwise, and that the plaintiffs are the true, lawful, and only owners of said certificate, and alone entitled to the possession of the same, and to any payments thereon, or to any certificates, bonds, or other paper or papers which have been or may be issued in lieu thereof, or be authorized to be issued by said act of Congress approved June 20, 1874, or otherwise

13. That when the certificate aforesaid was issued the act of Congress entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, was in full force and effect, and the affairs of the said District conducted and controlled accordingly, and that by said act the government of said District was chiefly vested in a governor, and a legislative assembly, consisting of a council and a house of delegates, and the board of public works, having entire control over the avenues, streets, alleys, and sewers of the said District, and possessing other specified and enumerated powers, the members of which
6 board were appointed by the President of the United States and confirmed by the Senate.

14. That by an act of Congress of the United States entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874, this form of government has been largely changed, and the said office of governor, the legislative assembly, and the board of public works abolished, and all the power theretofore possessed by the governor of said District and by the said board of public works have been vested in three commissioners, created and authorized by said act as aforesaid, except so far as said powers are specially limited by said act.

15. That the board of audit of the said District, composed of the first and second comptrollers of the Treasury of the United States as aforesaid, is by the said act "directed and required to give notice by publication, in such manner as they may deem necessary, for the presentation of the claims against said District and the said board of public works, which are designated in said act, for the period of ninety days, and, among other things, to examine and audit for settlement" the debt purporting to be evidenced and ascertained by certificates of the auditor of

the board of public works of said District, and to make a tabular and detailed statement thereof, as the same may be presented to them, and of the persons or corporations owning the same, and the amount found to be due thereon, and to issue to the owner or just and legal claimant a certificate, signed by each of the members of said board, stating the amount found due to such owner and claimant.

16. That said last mentioned certificates issued by the said board of audit are required to be countersigned by the comptroller of said District.

17. That the said commissioners of the sinking fund are authorized to issue, or cause to be issued, bonds of the District of Columbia, in sums of fifty and five hundred dollars, bearing date August 1, 1874,
7 payable fifty years after date, with interest at the rate of three and sixty-five hundredths per centum per annum, payable semi-annually, to be signed by the secretary and treasurer of the said sinking fund commissioners, and countersigned by the comptroller of said District, and sealed as the said board may direct; and, among other things, to exchange said bonds at par for like sums of indebtedness evidenced and ascertained by certificates of the auditor of the board of public works aforesaid, so far as the same may be examined and found correct by the said board of audit, and so far as certificates therefor may be issued to the owner of such indebtedness by said board of audit, and be countersigned by the comptroller of said District.

18. That the said notice, as required by the 6th section of the said act of Congress, was duly published by the said board of audit, and the said board has, since about the 9th day of July, 1874, been receiving claims as aforesaid for examination, audit, settlement, and issuing of certificates as aforesaid; that the time limited for the presentation of such claims in the said notice expired on the 7th day of Octobe 1874.

19. That from the information and belief of the plaintiffs, the said certificate, so deposited by them with the said Blumenberg, has been presented by the agents or attorneys of said defendant Blumenberg, or the person or persons, or association or corporation unknown, into whose possession the same were passed or delivered by said defendant, for audit and certificates as aforesaid, or will be presented to said board for that purpose, and with the further purpose of thereafter obtaining money therefor from the said District, or its representatives, agent, or attorney, or bonds from the said commissioners of the sinking fund, and converting the same to his or their own use, and so as to deprive the plaintiffs of their interest therein and their right thereto, and to carry out the fraudulent design of said Blumenberg, and his asso-
ciates unknown, to injure, wrong, and defraud the plaintiffs as
8 aforesaid, and that it is the purpose and design of the said board of audit to examine and audit said certificates in favor of the person or persons who may have presented or who may present the same to said board, without reference or regard to the true ownership thereof, or consideration of the plaintiffs' claim and right thereto.

20. The plaintiffs, since the said 20th day of August, 1874, have been and now are ready and willing to pay the amount due the said defendant Blumenberg, and now offer to pay the said amount into court on the return of the said certificate, or delivery of the same to the plaintiffs by the order of the court, or on the delivery to them of any papers substituted therefor by the board of audit aforesaid, or any person authorized to do so.

21. To the end, therefore, that the said Blumenberg and his confederates when discovered, as well as the other defendants, or any or either

of them, if they can, may show why the plaintiffs should not have the relief herein sought and prayed, and may upon their several respective and corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are required to answer; that is to say—

(*a.*) What disposition has been made of the said certificate of the auditor of the late board of public works hereinbefore described, No. 4441?

(*b.*) Has the said certificate been transferred to any person or persons, or been in any manner passed into the possession or custody of any individual, association, or corporation; if so, when, to whom, and by whom?

(*c.*) In whose custody or possession is the said certificate now?

9 (*d.*) Has the said certificate been presented to the said board of audit, or to any person in their employment, for examination, or audit, or settlement; and, if so, when, and by whom, or by what association or corporation, and in what form?

(*e.*) If the said certificate has been presented to said board of audit, or to any person in their employment, what action, if any, has been taken in relation thereto, and what action is it proposed by said board to take?

(*f.*) If the said certificate has been presented to the said board of audit as aforesaid, is the same in its original form, or accompanied by any evidence of ownership on the part of the person, association, or corporation presenting the same; if so, what is it?

(*g.*) Have certificates, or a certificate of the said board of audit, based on the said certificate of the auditor of the said board of public works, been presented to be signed or countersigned by the comptroller of the District of Columbia; if so, when, and by whom, and what has been done in this respect in relation to the same?

(*h.*) Have certificates or certificate of said board of audit been issued for or on account of the said certificate of the auditor of the board of public works to any person, association, or corporation; and if so, have said certificate or certificates been presented to the commissioners of the sinking fund, or any person in their employment, for exchange into bonds of the District; if so, when, and by whom, and has any such exchange been made?

(*i.*) Has the certificate aforesaid of the auditor of the board of public works been lifted, exchanged, or in any manner paid by the District of Columbia, or by the commissioners thereof, or by any appointee or officer thereof; if so, how, when, where, and to whom? And is it the purpose of said District or commission, or of any one acting for it, to lift, pay, or exchange any of said certificates in any manner?

10 22. That in view of all the facts and allegations aforesaid, the plaintiffs are without any adequate remedy at law by which they may be protected from the manifest wrongs and injuries aforesaid, and can only have full, fair, and complete relief in equity.

The plaintiffs therefore pray as follows:

1. That the defendant Rudolph Blumenberg, his agents, representatives, attorneys, and assignees, may be restrained from claiming or retaining the said certificate issued to the plaintiffs, as J. V. W. Vandenburgh & Co., by the auditor of the late board of public works, and that said certificate be declared to be the property of the plaintiffs, and that

the same may be ordered and decreed to be delivered into their possession or control as the owners thereof.

2. That the defendant Rudolph Blumenberg, his agents, representatives, attorneys, and assignees, may be restrained from receiving from the defendants R. W. Taylor and J. M. Brodhead, composing the board of audit as aforesaid, or either of them, or any one for them, any certificates which they may issue or execute in lieu of the said certificate of the auditor of the late board of public works, or in any wise rising out of or connected therewith.

3. That the said District of Columbia, its officers, representatives, agents, and attorneys, be restrained from paying said certificate to said defendant, Blumenberg, his representatives, agents, attorneys or assigns, and from in any manner, recognizing his or their pretended right thereto.

4. That the board of audit aforesaid be restrained and enjoined from regarding and treating said defendant, Blumenberg, or any person, association, or corporation acting for him, or in any manner under him, by delivery, assignment, or otherwise, as the owner or true claimant of said certificate, and from issuing to him, them, or any of them, any certificate of indebtedness arising out of the said certificate of
11 the auditor of the late board of public works, or in any manner connected therewith.

5. That the comptroller of the District of Columbia be restrained from countersigning any certificate which has been or may be issued to said defendant Blumenberg, based on the said certificate of the auditor of the late board of public works, or to any person, association, or corporation acting for him, to whom the same may have been in any manner or at any time delivered or transferred.

6. That the defendants Wm. W. Corcoran, Henry M. Sweeny, Lewis J. Davis and Moses Kelly, the commissioners of the sinking fund, be restrained and enjoined from issuing any bond or bonds to any person or persons on account of any certificate or certificates which have been or may be issued by the board of audit aforesaid for or on account of any indebtedness of the District of Columbia, or of the late board of public works, arising out of the said certificate of the auditor of the said board of public works.

7. That the said certificate of the auditor of the late board of public works be required to be brought into court, and on payment into court of the amount due said defendant, Blumenberg, that the same be delivered to the plaintiffs; or if the said certificate has been audited, or is examined and audited by the said board of audit, that the certificate issued or to be issued by the said board of audit be required to be brought into court for delivery as aforesaid to the said plaintiffs, as well as any bonds which may be issued based upon such audit or upon said certificate.

8. And for such other and further relief as the nature of the case may require and to the court shall seem proper.

9. And, to this end, may it please this honorable court to grant
12 unto the plaintiffs writs of subpœna directed to said defendants, Rudolph Blumenberg, District of Columbia, Wm. Dennison, Henry T. Blow, J. H. Ketcham, R. W. Tayler, J. M. Broadbead, Fitzhugh Coyle, W. W. Corcoran, Lewis J. Davis, Henry M. Sweeny, and Moses Kelly, commanding them and each of them at a certain time, and under a certain penalty therein to be mentioned and limited, to appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and

further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall seem meet.

And they will pray, &c.

J. V. W. VANDENBURGH & CO.

JAMES G. PAYNE,
Sol'r for Complainants.

DISTRICT OF COLUMBIA, *ss:*

One of the plaintiffs herein, being duly sworn according to law, makes oath that all matters and things which are stated in the foregoing bill as of personal knowledge are true, and those stated upon information and belief he verily believes to be true.

J. V. W. VANDENBURGH.

Sworn and subscribed to before me this 15th day of October, A. D. 1874.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

13 Here follows:

Subpœna to answer original bill and restraining order against R. Blumenberg.

Issued October 20, 1874.

Returned October 22, 1874.

Demurrer of def'ts R. W. Tayler and J. M. Broadhead.

In the supreme court of the District of Columbia.

J. V. W. VANDENBERG ET AL. *vs.* R. BLUMENBERG ET AL. } In equity. No. 3970.

Demurrer to bill.

And now come R. W. Tayler and John M. Broadhead, summoned as defendants in said suit, as the board of audit, and say that the said bill and the matters and things therein contained and set forth are not sufficient to entitle the complainants to any answer, relief, or discovery as against these defendants.

Wherefore they pray judgment whether they shall be compelled to make any further or other answer to said bill or any of the matters and things therein contained and set forth, and that they be hence dismissed with their reasonable costs in this behalf.

R. W. TAYLER.
J. M. BROADHEAD.

14 Here follows:

Amended bill of complaint, making N. A. Cowdrey a party defendant.

In the supreme court of the District of Columbia.

J. V. W. VANDENBURGH, H. L. CRANFORD, AND L. S. Filbert, trading as J. V. W. Vandenburgh & Co., *vs.* RUDOLPH BLUMENBERG ET AL. } 3970. Doc. 14, Eq.

The said complainants come, and leave of the court first being had

thereto, do amend their said bill of complaint by adding thereto the name of N. A. Cowdrey, as a party defendant to the said bill, and further say:

1. That the said N. A. Cowdrey is at this time, as the complainants are informed and believe, within the said District of Columbia, but is a citizen of the State of New York.

2. The complainants are informed and believe, and so aver, that the said N. A. Cowdrey claims to be the owner of the said certificate of the auditor of the late board of public works, mentioned and set forth in the said bill of complaint, a certificate number four thousand four hundred and forty-one, and, in fraud of the lawful rights of the complainants, is claiming and seeking to possess himself of the proceeds of the said certificate; that he is claiming and demanding from the said
15 board of audit of the District of Columbia the certificate or certificates to be issued by the said board in lieu of the said certificate No. 4441 of the auditor of the late board of public works, and that he is claiming and demanding, or about to claim and demand, from the said commissioners of the sinking fund the bonds to be issued upon or in lieu of such certificate or certificates, in fraud of the lawful rights of the complainants and to their wrong and injury.

The complainants therefore pray—

1. That the said N. A. Cowdrey be made a party defendant to the said original bill of complaint, and be required to answer the same as fully as if the same were here again fully and at large set forth.

2. That the said N. A. Cowdrey, his agents, attorneys, and representatives be enjoined and restrained from receiving from the defendants R. W. Tayler and J. M. Broadhead, comprising the board of audit as aforesaid, or either of them, or any one for them, or from the said commissioners of the sinking fund, or either of them, or any one for them, any certificate or certificates, bond or bonds, or other evidence of indebtedness which they, or either or any of them, may issue or execute in lieu of the said certificate of the auditor of the late board of public works, No. 4441, or in any wise arising therefrom or connected therewith.

3. That the usual writ of subpœna may issue to the said N. A. Cowdrey, &c.

4. And for such other and further relief as to the court may seem proper, &c.

I do solemnly swear that the matters and things herein stated as of personal knowledge are true, and those stated upon information and belief I verily believe to be true.

J. V. W. VANDENBURGH.

16 Subscribed and sworn before me this 17th day of November, 1874.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Asst. Clerk.

Filed November 17, 1874.

Here follows:

Subpœna to answer amended bill, and restraining order against N. A. Cowdrey.

Issued November 23d, 1874.

Returned March 5, 1875.

Appearance of absent defendant ordered.—Decree pro confesso against N. A. Cowdrey.

In the supreme court of the District of Columbia.

J. V. W. VANDENBURGH ET AL. *vs.* R. BLUMENBERG ET AL. } 3970. Eq. doc. 14.

It appearing to the court that publication of the summons issued in this cause against N. A. Cowdrey, defendant, has been duly made as required by the order passed herein on the 27th day of October, 1875, and that the said defendant has not appeared or made answer as summoned, it is this 21st day of December, 1875, ordered, adjudged, and decreed that the matters and things alleged and set forth in the said original and amended bills of complaint in this cause filed be taken for confessed against the said defendant, N. A. Cowdrey.

By the court.

Filed December 21, 1875.

17 *Answer of N. A. Cowdrey.*

Supreme court, district of Columbia.

J. V. W. VANDENBURGH AND OTHERS *vs.* M. MANDEL AND OTHERS, N. A. COWDREY, IMpleaded by amended bill filed Nov. 17th, 1874. } In equity. No. 3970.

Answer of N. A. Cowdrey, one of the defendants impleaded in the above-entitled cause.

N. A. Cowdrey, one of the above named defendants in this cause, answers and says:

That the first knowledge he had of this suit was given to him by Messrs. Bradley and Duvall at the city of Washington, on the 22d day of January, 1876.

That he is a citizen and resident of the city and State of New York, and has an office and place of business in said city at No. 25 William street, and has so had an established place of business at said No. 25 William street for more than ten years last past; that he verily believes that had any notice of this suit been sent to him by mail he would have received it in due course; that the only business day which he has been absent from said office for more than a year last past was on said 22d day of January, 1876.

Wherefore he prays the court to be allowed to file this his answer to said complaint now for then.

18 *Answer.*

The defendant N. A. Cowdrey, to so much of said complaint as he is advised it is material he should answer, says:

That he has no knowledge of the matters and allegations contained in said complaint, except as hereinafter admitted or averred, and he prays

the court to require proof from the plaintiffs of all other matters and things in said complaint contained.

In answer to the several interrogatories in said complaint contained, which this defendant is required to answer, he answers:

To interrogatory (*a*): That this defendant has no knowledge of any of said certificates, except certificate No. 4441, for $8,451.88; that this defendant presented said certificate to said board of audit, on or about the 16th day of July, 1874, properly assigned and transferred by the plaintiffs to this defendant; that said board of audit audited the claim or debt named in said certificate and gave their certificate of the board of audit therefor; and thereupon canceled said certificate of the board of public works, No. 4441.

To interrogatory (*b*): This defendant has no knowledge of any such transfer or possession.

To interrogatory (*c*): This defendant does not know.

To interrogatory (*d*): It has. No. 4441 was presented July 16th, 1874, to said board of audit by this defendant in the form as hereinafter set forth; that is to say, properly assigned and transferred to this defendant. A large number of similar certificates were presented at the same time.

19

To interrogatory (*e*): The board of audit has audited and given their certificate of said audit.

To interrogatory (*f*): The certificate of the board of public works, No. 4441, was presented in the original form bearing the endorsement of the plaintiffs, or rather their signature to the assignment printed on the back of said certificate, as herein below set forth.

To interrogatory (*g*): I believe it has; I do not know by whom; I think it was in December, 1874; the 3.65 District of Columbia bonds have been given therefor.

To interrogatory (*h*): The certificate of the board of audit was received by this defendant and presented by him to the sinking-fund commissioners, who gave him therefor and equivalent amount of the 3.65 District of Columbia bonds. I cannot tell the exact date; I think it was in December, 1874.

To interrogatory (*i*): It has been paid by the District of Columbia in said 3.65 bonds.

This defendant, further answering, says that it is wholly immaterial to the issue in this case whether the said certificate, No. 4441, when endorsed and delivered by the payees, was or was not, is or is not, a negotiable instrument, and whether this ownership does or does not pass by sale and delivery from hand to hand as commercial paper.

This defendant avers that under the facts and circumstances of this case he became the true and lawful owner of said certificate, No. 4441, and if the indebtedness represented thereby, which had been

20

previously issued for a debt found due to the plaintiffs by the District of Columbia, and afterwards purchased as herein set forth by this defendant, and the name was duly assigned and delivered to him by the said plaintiffs.

That the plaintiffs are estopped from denying such claim and ownership on the part of the defendant.

This defendant has no knowledge if any of the transactions between the plaintiffs and the defendant Mandel, and this defendant avers that he is in no wise bound or affected by any of the transactions of the plaintiffs with said Mandel.

That if the plaintiffs claim any of the allegations in the section of the bill of complaint offering on certain conditions to return the money said

by them to have been received from Mandel to be a tender of any money to or for the use of this defendant, it is the duty of the plaintiffs, and this defendant asks the court to require them so to do, to bring the money so claimed to have been tendered in the court and to deposit the same in the registry of this court subject to the order and control of the court; that, until the money is so deposited, this suit is a mere hypothetical speculative suit.

This defendant, further answering, says that he purchased said certificate of debt issued by the board of public works, No. 4441, of $8,451.88 on joint account with Marcellus Hartley, of the city of New York; that on the 27th day of November, 1874, before the service of notice of the amended bill making this defendant a party, which amended bill was filed November 17th, 1874, and notice thereof claimed to have been given by an order of publication October 27th, 1875, and, without any knowledge on the part of this defendant either of said original or said amended bill having been filed, this defendant on said 27th day of November, 1874, settled said joint account with said Hartley and sold and assigned all this defendant's interest in and to said certificate No.
21 4441, and to the debt represented thereby, and to the resulting proceeds thereof, to said Hartley.

That said Hartley and this defendant were on a casual visit to the city of Washington, District of Columbia; that said certificate of the board of public works, and similar ones, were offered for sale to them, the said Hartley and this defendant, by brokers and dealers, and they were solicited to purchase the same; that they made full inquiries and learned that said certificates, representing audited debts against the District of Columbia, when endorsed by the payees therein named, passed from hand to hand in the market as merchantable or transferable property, and that the value of said certificates was daily quoted at the stock exchange of the city of Washington, and that the holder of them on presentation of said certificates at the proper department of the government of the District of Columbia, or board of public works, for settlement, was recognized there as the owner, and received from the District of Columbia the amount due thereon.

That the amount of similar certificates issued by said board of public works was large; this defendant thinks about $7,000,000; and that there was a large traffic and trade in said certificates, the same passing from hand to hand by delivery, when endorsed by the payees; that the trade and traffic in said certificates was not confined to the city of Washington, but was carried on in other cities, viz: Baltimore, Richmond, Philadelphia, Newark, Jersey City, the city of New York, and other places, to this defendant unknown; that said facts had been known, and said trade in said certificates had been carried on for a long time previous to the purchase of said certificate No 4441, being made by this defendant; the defendant thinks for years; all of which was well known and participated in by the plaintiffs and by many others, payees of similar certificates, and also by many brokers, bankers, merchants, and others having money to invest or to use temporarily.

That under these circumstances as this defendant and said Hart-
22 ley purchased said certificate No. 4441 from a well known and responsible business man in the city of Washington, viz: Mr. L. L. Crounse, who resided and had an office in said city of Washington; that at the same time they purchased said certificate No. 4441, they also purchased many thousand dollars of other similar certificates in addition to said certificate No. 4441.

That when this defendant received said certificate No. 4441, it was

endorsed absolutely and unjustifiedly, and without limit or condition or any other token, sign, or matter or thing, to put this defendant upon inquiry in the handwriting of one of the plaintiffs, in the name of the firm.

That there was nothing upon or about said certificate to indicate that the plaintiffs had or retained any interest in the debt or money therein named, or that the plaintiffs had not transferred and assigned the amount therein named to be audited, and due fully and absolutely by such endorsement, to the holder.

This defendant avers that by said endorsement so made by the plaintiff upon said certificate No. 4441, the plaintiffs authorized the defendant, as a holder for value of said certificate, to write over their said endorsement of their name whatever might be necessary to perfect the title and interest of this defendant as such holder of said certificate and of the debt named therein.

That this defendant purchased said certificate No. 4441 of said L. L. Crounse, and paid the full market value thereof, and received said certificate from said Crounse, and thereupon caused to be written or printed upon the back of said certificate over the endorsement of the plaintiffs, the payees therein named, as follows:

"For value received, the within debt is assigned and transferred to N. A. Cowdrey, who is authorized to collect the same to his own use."

23 This defendant avers upon information and belief, that the plaintiffs themselves signed a blank receipt upon the back of said certificate, acknowledging that they had received the amount due thereon from James Magruder, treasurer of the board of public works, for the District of Columbia, although of this latter averment, he is not sure, not having seen said certificate since July 16th, 1874.

This defendant avers that the plaintiffs do not allege that there are any equities existing between the District of Columbia, the makers of said certificate of debt and themselves, as the payees named therein, by which said debt is not fairly and equitably due as set forth in, and by said certificate. Wherefore, this defendant having fully answered, prays that the original and amended bill of complaint may be dismissed with cost to this defendant. And the defendant as in duty bound will ever pray.

N. A. COWDREY.

JOSEPH H. BRADLEY,
Sol'r for Def't.

CITY, COUNTY AND STATE OF NEW YORK, *ss:*

N. A. Cowdrey, whose name is signed to the foregoing answer, makes oath according to law, that he has read and understands the same, and that the facts therein stated as of his own knowledge are true, and that he believes them to be true which are therein stated on information and belief.

N. A. COWDREY.

24 Subscribed and sworn to before me this 27th day of January, 1876.

R. E. STILWELL,
U. S. Com'r.

Filed January 28, 1876.

Here follows:

Replication to answer of defendant, N. A. Cowdrey.

In the supreme court of the district of Columbia.

J. V. W. VANDENBURGH ET AL.
vs.
R. BLUMENBERG, N. A. COWDREY, ET AL. } No. 3970. Eq. Doc. 14.

The complainants join issue with the defendant, N. A. Cowdrey, upon his answer, and will hear the cause as to the said defendant, upon the bills of complaint, answers and proofs.

JAMES G. PAYNE,
Sol'r for Compl'ts.

Filed July 13, 1877.

1877, Dec. 17. Depositions behalf compl't filed.
Decree against defendant, N. A. Cowdrey, for the sum of $3,543.57.

25 In the supreme court of the District of Columbia.

J. V. W. VANDENBURGH ET AL.
vs.
R. BLUMENBERG, N. A. COWDREY, ET AL. } 3970, Eq. Doc. 14.

This cause coming on to be heard on the original and amended bills of complaint, the answer of the defendant, N. A. Cowdrey, the replication thereto, and the depositions taken in support of the bills of complaint, and the cause being argued by counsel for both sides, and duly considered by the court. it is, this 2nd day of April, 1878, ordered, adjudged, and decreed, that as to the defendant N. A. Cowdrey, the plaintiffs are entitled to recover, and it is hereby ordered, adjudged and decreed that they recover from him the value of bonds of the District of Columbia commonly known as three sixty-five, of the par value of eight thousand four hundred and fifty-one 88-100 dollars ($8,451.88), together with the interest paid and collected upon the said bonds, less three thousand one hundred and sixty dollars, with interest thereon from 17th day of February, 1874, to the date of this decree, which several amounts being ascertained by agreement of counsel, there appears to be due from the defendant N. A. Cowdrey to the complainants the sum of three thousand five hundred and forty-three dollars and fifty-seven cents ($3,543.57).

And it is therefore, ordered, adjudged, and decreed that the complainants do recover from the said defendants the sum of three thousand five-hundred and forty-three 57-100 dollars, together with costs, and that they have execution as at law therefor.

By the court.

MAC ARTHUR,
Justice.

Filed April 2, 1878.

26 *Appeal prayed and allowed.*

In the supreme court of the District of Columbia, holding an equity term.

J. V. W. VANDENBURGH ET AL.
vs.
BLUMENBERG, COWDREY, ET AL. } No. 3970, Eq. Doc.

In this cause, the defendant N. A. Cowdrey in open court, this 9th day of April, A. D. 1878, prays an appeal from the decree entered therein against him to the court in general term, and files herewith his undertaking with Mr. Hartley and M. W. Galt, as his sureties therein, as prescribed by the rule of this court.

JOSEPH H. BRADLEY,
Sol'r for N. A. Cowdrey.

And, thereupon, it is by the court ordered, this 9th day of April, A. D., 1878, that the said appeal be, and the same is hereby allowed, and the said undertaking is approved by this court.

By the court.

MAC ARTHUR,
Justice.

Filed April 9, 1878.

Here follows proof of publication.

Filed June 14, 1878.

27 *Decree. General term. Appeal to S. C. U. S.*

J. V. W. VANDENBURGH, H. L. CRAWFORD, L. S. Filbert, trading as J. V. W. Vandenburgh & Co.
vs.
RANDOLPH BLUMENBERG, THE DISTRICT OF Columbia, et al. } In equity. No. 3970.

1879, OCT. 2.

This cause came on to be heard upon the appeal of N. A. Caudrey, defendant, from the decree of the special term in equity of April 2, 1878, whereby it was ordered, adjudged, and decreed that the complainants do recover from the said defendants the sum of $3,543\frac{57}{100}$, together with costs, and have execution therefor as at law, which said decree was submitted to the court without argument on either side; whereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court here, this 2d day of October, 1879, that the said decree of the said special term be and the same is hereby affirmed with costs.

And from this decree the said defendant N. A. Caudrey, by his solicitor, here now in open court, prays an appeal to the Supreme Court of the United States, and the same is allowed.

28 In the supreme court of the District of Columbia, the 13th day of October, 1879.

J. V. W. VANDENBURG AND OTHERS, TRADING as J. V. W. Vandenburg and Company, *vs.* RUDOLPH BLUMENBERG, THE DISTRICT OF COLUMBIA. } In equity. No. 3970. Appeal.

Know all men by these presents, that we, N. A. Cowdrey and Marcellus Hartley, both of the city of New York, are bound unto the above-named J. V. W. Vandenburg, H. L. Crawford, and L. S. Filbert, trading as J. V. W. Vandenburg & Co., in the sum of seven thousand dollars, to be paid to the said J. V. W. Vandenburg and Company, and the survivors and survivor of them, their and his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 13th day of October, 1879.

Whereas the above-named N. A. Cowdrey has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named N. A. Cowdrey shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

N. A. COWDREY. [L. S.]
MARCELLUS HARTLEY. [SEAL.]

Sealed and delivered in presence of—
H. C. BANKS.
J. J. WARD.

Approved by order of the court.

D. K. CARTTER,
Ch'f Justice.

29 STATE OF NEW YORK,
City & County of New York, ss:

Marcellus Hartley, being duly sworn, deposes and says that he is the individual who signed the within bond; that he resides in the city of New York, at No. Madison avenue, and is a freeholder in said city; that he is worth more than the sum of fifty thousand dollars over and above all debts, and property exempt by law from execution.

MARCELLUS HARTLEY.

Signed and sworn to before me on the 16th day of October, 1879.
[SEAL NOTARY PUBLIC.] HENRY C. BANKS,
Notary Public, 3 John Street, New York City.

30 *Authentication of record.—Clerk's certificate.*

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the

writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 15 day of November, 1879.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS,
Assistant Clerk.

(Indorsement on cover:) No. 1075. N. A. Cowdrey, appellant, vs. J. V. W. Vandenburgh, H. L. Cranford, & L. S. Filbert, as J. V. W. Vandenburgh & Co. District of Columbia sup. court. Filed 17 November, 1879.